

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
George S. Flinn, J.)	CSR-8608-M
)	Docket No. 12-87
v.)	
)	
Comcast Cable Communications, LLC,)	CSR-8625-A
on behalf of its subsidiaries and affiliates)	Docket No. 12-114
)	

TO: Chief, Media Bureau

OPPOSITION TO PETITION FOR RECONSIDERATION

Comcast Cable Communications, LLC, on behalf of its subsidiaries and affiliates (hereinafter “Comcast” or the “Company”), hereby opposes the Petition for Reconsideration (“Petition”) filed by George S. Flinn, Jr. (“Flinn”), licensee of television station WFBD (Channel 48, Destin, Florida) (“WFBD” or the “Station”) in the above-captioned proceedings. Flinn seeks reversal of the Media Bureau’s (the “Bureau”) Order in *George S. Flinn, Jr. v. Comcast Cable Communications, LLC*,¹ which: (1) granted Comcast’s petition to modify the Station’s must carry market to exclude certain communities served by Comcast that are located in the Mobile-Pensacola DMA; and (2) denied the Station’s must carry complaint involving the same communities.² The Bureau should dismiss or deny the Petition, as it is both procedurally defective and substantively without merit.

¹ DA 12-1265 (rel. Aug. 3, 2012) (the “Order”).

² The Cable Communities include the Alabama communities of Chickasaw, Mobile, Prichard, Saraland, Dauphin Island, and immediately surrounding areas of unincorporated Mobile County. *See* Petition for Special Relief, CSR-8625-A, at 1 n.1 (Apr. 24, 2012)(“Petition for Special Relief”).

I. THE PETITION SHOULD BE DISMISSED AS UNTIMELY

Flinn's Petition must be dismissed because it was not filed within the filing period clearly established in both the Communications Act and the Commission's Rules. Section 405(a) of the Communications Act expressly states that "[a] petition for reconsideration must be filed within thirty days from the date upon which public notice is given of the order . . . complained of."³ Echoing this statutory provision, Section 1.106(f) of the Commission's Rules requires that petitions for reconsideration be filed "within 30 days of public notice of the final Commission action."⁴ The "final Commission action" in this proceeding was the Bureau's Order, and "public notice" of that action occurred the date the Order was released, August 3, 2012.⁵ The deadline for filing a petition for reconsideration, therefore, was September 4, 2012 – the first business day following 30 days from the August 3 Order. Flinn's Petition, however, was not filed until September 6, 2012⁶ -- *after* the deadline set by both the Communications Act and the Commission's Rules. Accordingly, Flinn's Petition must be dismissed as untimely.

II. THE PETITION FAILS TO PROVIDE ANY MATERIAL BASIS FOR REVERSAL

Beyond the procedural deficiency described above, the Petition should be denied because it fails to provide any substantive basis for reversing the Order. Instead, the Petition merely

³ 47 U.S.C. § 405(a).

⁴ 47 C.F.R. § 1.106(f).

⁵ See 47 C.F.R. § 1.4(b)(2). See also *Marcus Cable Associates, LLC (For Modification of the Dallas-Ft. Worth, TX ADI), Complaint of KTAQ-TV 47 v. Marcus Cable Associates, LLC (Request for Carriage)*, 15 FCC Rcd. 19099 ¶ 6 (2000) ("[T]he date of public notice of a decision is the day that the relevant action is taken (i.e., the day the item is published in the Federal Register, or *the date the item is released*).") (Emphasis added).

⁶ The Petition is dated September 6, 2012. The Commission's Electronic Comment Filing System confirms that filing date. See Exhibit A.

rehashes the arguments the Station made in its Opposition to Comcast's Petition for Special Relief, arguments that the Bureau properly considered and rejected.

Much of the Petition tracks, virtually verbatim, Flinn's Opposition in the initial proceeding.⁷ In fact, the Petition repeatedly introduces arguments by emphasizing that they were already made in the earlier proceeding.⁸ The Bureau has explained the Commission's long-standing policy against petitions for reconsideration that simply repeat arguments previously made and rejected:

Reconsideration is appropriate only where the petitioner shows either a material error or omission in the original order or raises additional facts not known or not existing until after the petitioner's last opportunity to respond. Reconsideration will not be granted for the purpose of debating matters on which we have already deliberated and spoken."⁹

Flinn's Petition does not identify any material error or omission in the Bureau's Order. Nor does it offer any additional facts or evidence not previously before the Bureau. The Bureau properly considered and rejected each of Flinn's arguments in the Order, and it should do so again here.

As was fully addressed in the underlying proceeding, and as confirmed by the Bureau in its Order, the Station fails each of the four market modification criteria set forth in Section 614 of the Communications Act:

- WFBD has no history of carriage in the Cable Communities and cannot be considered a "new" station because it "has been in operation for approximately seven years."¹⁰

⁷ Compare Petition at 1-3, 9, with Opposition to Petition for Special Relief, CSR-8625-A, Docket 12-114, at 1-3, 7-9 (May 17, 2012)

⁸ See, e.g., Petition at 5 ("As Flinn demonstrated in its 'Opposition to Petition for Special Relief' ..."), 7 ("As Flinn noted in its 'Opposition to Petition for Special Relief' ..."), 8 ("in its 'Opposition to Petition for Special Relief', Flinn stated ...").

⁹ *Lankenau Small Media Network v. Ohio Cablevision Network*, 13 FCC Rcd. 4497 ¶ 13 (1998).

¹⁰ Order ¶ 10. And even if WFBD was a new station, the Bureau properly "modif[ied] its market because of its failure to cover any of the communities with a Grade B signal and its failure to substantiate any claim that it provides locally-oriented programming to the communities." *Id.*

- WFBD is geographically distant from the Cable Communities, does not provide signal “coverage” to the Cable Communities, and fails to show that it provides *any* “local” programming.¹¹
- Comcast already carries numerous other “local” broadcast stations in the Cable Communities that provide coverage of local news and sporting events to the Cable Communities.¹²
- WFBD has no discernible viewership in any of the Cable Communities.¹³

Flinn's Petition essentially boils down to an assertion that the Bureau misapplied the “four factor” market modification test set forth in Section 614 of the Communications Act by giving too much weight to the fact that WFBD does not provide a Grade B signal to the Cable Communities and not enough weight to the other factors in the test.¹⁴ Yet, the Bureau applied the test consistent with the statutory language and decades of Commission precedent.¹⁵ Moreover, the Petition fails to identify any evidence that supports carriage of WFBD in the Cable Communities. In fact, the only material basis Flinn advances for granting WFBD carriage rights

¹¹ *Id.* ¶¶ 11-14, 17. Flinn's reliance on carriage of WFBD by Dish, DirecTV, and Mediacom in the DMA, *see* Petition at 7-8, is irrelevant to the issue of whether WFBD “provides coverage or other local service” to the cable communities. As the Commission has explained previously, “Satellite carriage does not necessarily reflect local interest in a station within various or different regions of a market.” *Time Warner Cable Petition for Modification of the Television Market of Television Station KHIZ (TV), Barstow, Cal.*, 19 FCC Rcd. 18618 ¶ 7 (2004). Similarly, the Commission has held that, “while carriage by a neighboring cable operator may be a relevant factor in certain market modification cases, such evidence is clearly overwhelmed by the Station’s lack of a local connection to the cable communities at issue here.” *Avenue TV Cable Serv., Inc. Petition for Special Relief*, 18 FCC Rcd. 23823 ¶ 17 (2003). In this case, Flinn has not provided any evidence as to the extent or details of Mediacom’s carriage of WFBD and Comcast’s demonstration of a lack of market nexus between WFBD and the Cable Communities clearly overwhelms any alleged cable system carriage elsewhere in the DMA.

¹² *Id.* ¶ 15.

¹³ *Id.* ¶¶ 16-17.

¹⁴ *See* Petition at 5-6.

¹⁵ *See* Order ¶ 10 & n.29. In fact the Bureau expressly explained why, given the lack of WFBD’s historical carriage, it relied more on WFBD’s “Grade B contour to delineate its market.” *Id.* ¶ 10.

in the Cable Communities is that the Station and the Cable Communities are in the same DMA. However, if that were the only criteria for granting carriage rights, the market modification provisions of the Communications Act would be rendered meaningless.

The Bureau has done here exactly what Congress expected it to do under the market modification procedure established in Section 614(h) of the Communications Act. It properly weighed all of the evidence before it and reasonably concluded that the Station does not merit must carry rights in the Cable Communities.

CONCLUSION

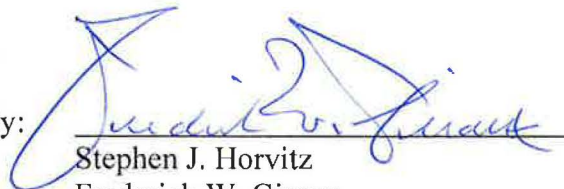
For the reasons set forth herein, Comcast requests that the Commission dismiss or deny Flinn's Petition for Reconsideration.

Respectfully submitted,

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September 19, 2012

EXHIBIT A

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Lawfirm Name: Attorney at Law
Attorney/Author Name: Stephen C. Simpson
View Filing: [View \(12\)](#)
Type of Filing: PETITION FOR RECONSIDERATION
Exparte: No
Small Business Impact: No
Date Received: 09/06/2012
Date Posted: 09/07/2012
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Petition for Reconsideration

George S. Flinn, Jr. ("Flinn"), by his attorney and pursuant to Section 1.106 of the

9:31 AM 9/13/2012

CERTIFICATE OF SERVICE

I, Deborah D. Williams, do hereby certify on this 19th day of September, 2012 that a true and correct copy of the foregoing "Opposition to Petition for Reconsideration" has been sent via U.S. mail, postage prepaid to the following:

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